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IN THE COURT OF APPEALS OF INDIANA

TIMOTHY P. HEIL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A01-0801-CR-12
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLARK CIRCUIT COURT
The Honorable Daniel F. Donahue, Judge
Cause No. 10C01-0508-FC-88

June 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Timothy Heil appeals his sentences for child molesting as a class C felony,[1] vicarious sexual gratification as a class D felony,[2] and his status as a repeat sexual offender.[3] Heil raises one issue, which we revise and restate as:

I. Whether the trial court abused its discretion in sentencing Heil; and

II. Whether the sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. In August 2005, the State charged Heil with: (1) Count I, child molesting as a class C felony; (2) Count II, child molesting as a class C felony; (3) Count III, voyeurism as a class D felony;[4] (4) Count IV, vicarious sexual gratification as a class D felony; (5) Count V, intimidation as a class D felony;[5] (6) Count VI, failure to register as a class D felony;[6] (7) Count VII, child exploitation as a class D felony;[7] (8)

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[1] Ind. Code § 35-42-4-3 (2004) (subsequently amended by Pub. L. No. 216-2007, § 42 (eff. July 1, 2007)).

[2] Ind. Code § 35-42-4-5 (2004).

[3] Ind. Code § 35-50-2-14 (Supp. 2005) (subsequently amended by Pub. L. No. 6-2006, § 9 (eff. July 1, 2006), Pub. L. No. 140-2006, § 37 (eff. July 1, 2006), and Pub. L. No. 173-2006, § 37 (eff. July 1, 2006)).

[4] Ind. Code § 35-45-4-5 (2004) (subsequently amended by Pub. L. No. 7-2005, § 1 (eff. July 1, 2005)).

[5] Ind. Code § 35-45-2-1 (2004) (subsequently amended by Pub. L. No. 3-2006, § 2 (eff. Mar. 2, 2006)).

[6] Ind. Code § 5-2-12-9 (2004) (repealed by Pub. L. No. 140-2006, § 41, and Pub. L. No. 173-2006, § 55)

[7] Ind. Code § 35-42-4-4 (2004) (subsequently amended by Pub. L. No. 216-2007, § 43 (eff. July 1, 2007)).

Count VIII, theft as a class D felony;[8] (9) Count IX, theft as a class D felony; and (10) Count X, repeat sexual offender enhancement.

On September 19, 2007, the day after his jury trial was scheduled to begin, a guilty plea hearing was held before a judge pro tempore. Heil pleaded guilty to Count I, child molesting as a class C felony, Count IV, vicarious sexual gratification as a class D felony, and Count X, repeat sexual offender. The State dismissed the remaining charges. The plea agreement did not address Heil's right to have a jury determine aggravating factors.

At the October 17, 2007 sentencing hearing, the trial court acknowledged that a guilty plea hearing had already been held but wished to perform the guilty plea hearing again because he did not preside over the first hearing. With respect to the child molesting allegation, Heil admitted that, on June 18, 2005, he touched the breast of K.H., a child under the age of fourteen, with the intent to arouse or satisfy the sexual desires of either K.H. or himself. With respect to the vicarious sexual gratification allegation, Heil admitted that, in December 2004, he touched himself in the presence of K.H., a child under the age of fourteen, with the intent to arouse or satisfy his sexual desires. As for the repeat sexual offender allegation, Heil admitted that he had been previously convicted of child molesting on May 5, 2000. The State then moved, without objection from Heil, to incorporate the probable cause affidavit "for factual basis," and the trial court granted the request. Transcript at 21.

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[8] Ind. Code § 35-43-4-2 (2004).

At the sentencing hearing, the trial court found the following aggravating factors: (1) Heil had previously attended sexual offender treatment during probation but "failed to adhere to the lessons learned;" (2) Heil threatened K.H. by telling her that he "would ruin her reputation at school by telling the kids at school that [K.H.] did sexual favors for [him];" (3) K.H. was in a position of trust with Heil; (4) Heil was not current with his registration on the Indiana Sex and Violent Offender Registry at the time of the offenses; and (5) Heil expressed no remorse. Id. at 37. The trial court sentenced Heil to consecutive terms of eight years for the child molesting conviction, three years for the vicarious sexual gratification conviction, and four years for his status as a repeat sexual offender. Thus, Heil received an aggregate sentence of fifteen years in the Indiana Department of Correction.

I.

The first issue is whether the trial court abused its discretion in sentencing Heil. Heil challenges his sentences for the vicarious sexual gratification conviction and the child molesting conviction but concedes that the sentence for his status as a repeat sexual offender is correct. Specifically, Heil challenges aggravators found by the trial court, the trial court's failure to find certain mitigators, and the trial court's imposition of consecutive sentences.

Heil correctly points out that his vicarious sexual gratification offense was committed in December 2004, prior to the April 25, 2005 revisions to the sentencing statutes, while his child molesting conviction was committed in June 2005, after the revisions to the sentencing statutes. The Indiana Supreme Court has held that we apply

the sentencing scheme in effect at the time of the defendant's offense. See Robertson v. State, 871 N.E.2d 280, 286 (Ind. 2007) ("Although Robertson was sentenced after the amendments to Indiana's sentencing scheme, his offense occurred before the amendments were effective so the pre-Blakely sentencing scheme applies to Robertson's sentence."); Gutermuth v. State, 868 N.E.2d 427, 432 n.4 (Ind. 2007). Consequently, the pre-April 25, 2005 presumptive sentencing scheme applies to Heil's vicarious sexual gratification conviction, while the post-April 25, 2005 advisory sentencing scheme applies to Heil's child molesting conviction.

A. *Sentence for Vicarious Sexual Gratification*.

Under the pre-April 25, 2005 sentencing statutes, sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998). In order for a trial court to impose an enhanced sentence, it must: (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found to those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. Veal v. State, 784 N.E.2d 490, 494 (Ind. 2003).

1. *Aggravators.*

The trial court sentenced Heil to three years in the Indiana Department of Correction for his vicarious sexual gratification conviction. Heil argues that, in enhancing his sentence, the trial court sentenced him in violation of Blakely v.

Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004), reh'g denied. Specifically, Heil argues that none of the aggravators found by the trial court were proper under Blakely.

> [A]n aggravating circumstance is proper for Blakely purposes when it is: 1) a fact of prior conviction; 2) found by a jury beyond a reasonable doubt; 3) admitted to by a defendant; or 4) stipulated to by the defendant, or found by a judge after the defendant consents to judicial fact-finding, during the course of a guilty plea in which the defendant has waived his Apprendi rights.

Mask v. State, 829 N.E.2d 932, 936-937 (Ind. 2005) (citing Trusley v. State, 829 N.E.2d 923, 925 (Ind. 2005)).

We first note that the issue of Blakely was not addressed in Heil's plea agreement and was not discussed at the October 17, 2007 guilty plea and sentencing hearing. Because we were not provided with the transcript of the September 19, 2007 guilty plea hearing, we do not know if Blakely was addressed at that point or what admissions Heil may have made during that hearing.

In Miller v. State, 753 N.E.2d 1284 (Ind. 2001), reh'g denied, the Indiana Supreme Court addressed a similar situation. There, the defendant failed to provide a transcript of a "January 8, 1999, hearing in which the trial court found him guilty on three counts of criminal recklessness instead of three counts of attempted murder." 753 N.E.2d at 1287. The Supreme Court noted that the defendant "gave no explanation as to why the proceeding was missing from the record." Id. The Court further noted that "Defendant, as the appellant, has the responsibility to present a sufficient record that supports his claim in order for an intelligent review of the issues." Id. "[W]ithout submitting a complete record of the issues for which an appellant claims error, the appellant waives

the right to appellate review." Id. The Court held that "[w]ithout a transcript of the January 8th hearing, we are unable to discern whether (1) the trial court sua sponte found Defendant guilty of criminal recklessness and Defendant objected or failed to object; or (2) the prosecutor amended the information reducing the charges and Defendant objected or failed to object; or (3) the Defendant requested that criminal recklessness be considered in lieu of attempted murder." Id.

Similarly, here, without the transcript of the first guilty plea hearing, we are unable to determine whether Heil admitted any of the facts supporting the aggravators or whether Heil waived his Blakely rights during that first guilty plea hearing. Heil had the responsibility to present a sufficient record that supports his claim in order for an intelligent review of the issues. Id. Because he failed to provide the transcript for the first guilty plea hearing, we conclude that Heil has waived the right to appellate review of this issue.[9] See, e.g., id.

2. *Mitigators.*

Heil argues that the trial court abused its discretion by failing to consider certain proposed mitigators. Specifically, Heil contends that the trial court overlooked his guilty plea, letters regarding Heil's personality, the fact that he had been the victim of sexual abuse as a child, and his mental health. "The finding of mitigating factors is not

[9] The State also argues that Heil waived any Blakely argument by failing to raise the issue at the sentencing hearing. However, the Indiana Supreme Court held in Mitchell v. State, 844 N.E.2d 88, 91 (Ind. 2006), that a defendant may challenge his sentence on Blakely grounds in the initial brief on direct appeal. See also Garland v. State, 855 N.E.2d 703, 707 n.2 (Ind. Ct. App. 2006) (holding that a defendant did not waive Blakely by failing to object at his resentencing hearing).

mandatory and rests within the discretion of the trial court." Ellis v. State, 736 N.E.2d 731, 736 (Ind. 2000). The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Gross v. State, 769 N.E.2d 1136, 1140 (Ind. 2002). "Nor is the court required to give the same weight to proffered mitigating factors as the defendant does." Id. Further, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Sherwood v. State, 749 N.E.2d 36, 38 (Ind. 2001). However, the trial court may "not ignore facts in the record that would mitigate an offense, and a failure to find mitigating circumstances that are clearly supported by the record may imply that the trial court failed to properly consider them." Id. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999).

As for consideration of Heil's guilty plea, the Indiana Supreme Court has held that "a defendant who pleads guilty deserves 'some' mitigating weight be given to the plea in return." Anglemyer v. State, 875 N.E.2d 218, 220 (Ind. 2007) ("Anglemyer Rehearing") (quoting McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007)). However, "an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant." Id. at 220-221. The significance of a guilty plea as a mitigating factor varies from case to case. Id. at 221. "For example, a guilty plea may not be significantly mitigating when it does not demonstrate the defendant's acceptance

of responsibility, . . . or when the defendant receives a substantial benefit in return for the plea." Id. (citing Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999)).

Here, in exchange for Heil's guilty plea, the State dismissed one count of child molesting as a class C felony, voyeurism as a class D felony, intimidation as a class D felony, failure to register as a class D felony, child exploitation as a class D felony, and two counts of theft as class D felonies. Given the significant benefit that Heil received as a result of the plea agreement, we conclude that the trial court did not abuse its discretion. See, e.g., Sensback, 720 N.E.2d at 1165.

Heil next claims that the trial court overlooked the letters submitted by his family and friends on his behalf. However, the trial court specifically took a break during the sentencing hearing to review the submissions. The letters describe Heil as polite, caring, considerate, conscientious, and hardworking. The description of Heil in the letters stands in stark contrast to the description of Heil presented by K.H. and her mother at the sentencing hearing. Given the facts of Heil's offenses and the testimony, it is apparent that, while the trial court considered the letters, the trial court did not consider the letters to be significant. We cannot say that the trial court abused its discretion.

Next, Heil claims that the trial court overlooked his mental health. The PSI notes that, according to Heil, he had been prescribed medication for depression and that he had been hearing voices while in custody and had been "prescribed medication for that illness." Appellant's Appendix at 104. The Indiana Supreme Court has held that there are several considerations that bear on the weight, if any, that should be given to mental illness in sentencing, including: (1) the extent of the defendant's inability to control his

behavior due to the disorder, (2) overall limitations on functioning, (3) the duration of the mental illness, and (4) the extent of any nexus between the disorder and the commission of the crime. Weeks v. State, 697 N.E.2d 28, 30 (Ind. 1998). Here, there is no indication that Heil was hearing voices or was depressed at the time of the offenses. Further, there is no evidence in the record relevant to any of the four factors identified in Weeks. Heil has failed to demonstrate that his mental health issues were both significant and clearly supported by the record. We conclude that the trial court did not abuse its discretion. See, e.g., Wooley v. State, 716 N.E.2d 919, 931 (Ind. 1999) (holding that the trial court did not abuse its discretion by determining that the defendant's mental illness was not a mitigating factor), reh'g denied.

Finally, Heil claims that the trial court abused its discretion by overlooking the fact that he was sexually abused as a child. The PSI indicates only that Heil was sexually molested by a sixteen-year-old boy in his neighborhood when he was twelve years old. The trial court was not obliged to afford any weight to Heil's childhood history as a mitigating factor in that Heil never established why his past victimization led to his current behavior. See, e.g., Hines v. State, 856 N.E.2d 1275, 1283 (Ind. Ct. App. 2006) (holding that the trial court did not abuse its discretion by rejecting the defendant's childhood molestation as a mitigating factor), trans. denied. Having concluded that Heil waived review of his Blakely claims and that the trial court did not overlook the proposed mitigators, we conclude that the trial court did not abuse its discretion in sentencing Heil for the vicarious sexual gratification conviction.

B. *Sentence for Child Molesting*.

The trial court sentenced Heil to eight years for his child molesting conviction. We again note that this offense was committed after the April 25, 2005 sentencing statute revisions. In clarifying these revisions, the Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Id.

A trial court abuses its discretion if it: (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence--including a finding of aggravating and mitigating factors if any--but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law." Id. at 490-491. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Id. at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. Id.

1. *Mitigators.*

Heil argues that the trial court abused its discretion by overlooking certain mitigators. However, we have addressed these arguments above in the context of his

sentence for the vicarious sexual gratification conviction. We conclude that the trial court did not abuse its discretion by rejecting the proposed mitigators.

2. *Aggravators.*

Heil argues that three of the five aggravators were improper. Heil concedes that the trial court properly considered the fact that Heil had previously attended sexual offender treatment during probation but "failed to adhere to the lessons learned" and the fact that K.H. was in a position of trust with Heil. Transcript at 37. Heil argues that the following aggravators were improper: (1) Heil threatened K.H. by telling her that he "would ruin her reputation at school by telling the kids at school that [K.H.] did sexual favors for [him];" (4) Heil was not current with his registration on the Indiana Sex and Violent Offender Registry at the time of the offenses; and (5) Heil expressed no remorse. Id.

We first consider the fact that Heil threatened K.H. This information comes from the probable cause affidavit, which was incorporated, without any objection from Heil, during the guilty plea hearing "for factual basis." Id. at 21. A trial court may properly consider the nature and circumstances surrounding a crime as an aggravating factor. Smith v. State, 872 N.E.2d 169, 178 (Ind. Ct. App. 2007), trans. denied. Because Heil threatened K.H. to prevent her from revealing his offenses, we cannot say that the trial court abused its discretion in considering this aggravator. See, e.g., Johnson v. State, 830 N.E.2d 895, 897 (Ind. 2005) (holding that the nature and circumstances was a proper aggravator where the trial court relied, in part, upon the fact that the defendant threatened the victim).

We next consider the aggravator that Heil was not current on his sex offender registration requirements at the time of the offenses. Heil correctly points out that he was originally charged with failure to register and that charge was dismissed as part of the plea agreement. A plea agreement is a contract binding upon both parties when accepted by the trial court. Farmer v. State, 772 N.E.2d 1025, 1027 (Ind. Ct. App. 2002). This court will give effect to the parties' intent. Id. A trial court's reliance on facts that support charges dismissed as part of a plea agreement essentially circumvents the plea agreement and is therefore improper. Id. The trial court improperly used the fact that Heil was not current on his registration requirements as an aggravator where those charges were dismissed as part of the plea agreement. Consequently, we conclude that the trial court abused its discretion by using this aggravator. See, e.g., Farmer, 772 N.E.2d at 1027 (holding the trial court improperly enhanced defendant's sentence by resort to facts supporting charges dismissed pursuant to a plea agreement).

Lastly, we consider the trial court's use of Heil's lack of remorse as an aggravating factor. A trial court may find a defendant's lack of remorse to be an aggravating factor. Veal, 784 N.E.2d at 494. Heil argues "it is certainly arguable that by agreeing to plead guilty and spare the victim the trauma of a jury trial [he] was exhibiting a degree of remorse." Appellant's Brief at 13. A trial court's determination of a defendant's remorse is similar to a determination of credibility. Pickens v. State, 767 N.E.2d 530, 534-535 (Ind. 2002). Without evidence of some impermissible consideration by the court, we accept its determination of credibility. Id. The trial court is in the best position to judge the sincerity of a defendant's remorse. Stout v. State, 834 N.E.2d 707,

711 (Ind. Ct. App. 2005), trans. denied. We cannot say that the trial court here abused its discretion when it considered Heil's lack of remorse as an aggravating factor.

In summary, we conclude that the trial court considered one improper aggravator and four proper aggravators. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Anglemyer, 868 N.E.2d at 491. Given Heil's criminal history, the remaining aggravators, and the lack of mitigators, we can say with confidence that the trial court would have imposed the same sentence without consideration of the one improper aggravator.

C. *Consecutive Sentencing*.

Heil argues that the trial court failed to articulate a reason for imposing consecutive sentences. "When sentencing a defendant on multiple counts, an Indiana trial judge may impose a consecutive sentence if he or she finds at least one aggravator." Smylie v. State, 823 N.E.2d 679, 686 (Ind. 2005), cert. denied, 546 U.S. 976, 126 S. Ct. 545 (2005); see Ind. Code § 35-50-1-2(c). The trial court here found four valid aggravators, and it was not necessary that the trial court separately articulate a reason for imposing consecutive sentences.[10] We conclude that the trial court did not abuse its

[10] In support of his argument, Heil relies upon Lewis v. State, 755 N.E.2d 1116, 1127 (Ind. Ct. App. 2007). However, there, the trial court did not identify any aggravating factors but still imposed consecutive sentences. 755 N.E.2d at 1127. Here, the trial court identified multiple valid aggravating factors.

We acknowledge the Indiana Supreme Court's recent opinion in Monroe v. State, 886 N.E.2d 578, 2008 WL 2152735 (Ind. 2008), but conclude that it is distinguishable from this case. In Monroe, the

discretion by imposing consecutive sentences. See, e.g., Hampton v. State, 873 N.E.2d 1074, 1082 (Ind. Ct. App. 2007) (holding that the trial court did not abuse its discretion by imposing consecutive sentences).

II.

The next issue is whether Heil's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender."[11] Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that Heil pleaded guilty to molesting his adopted daughter, K.H., by touching her breast. Heil also admitted to entering K.H.'s bedroom, exposing his penis, and ejaculating onto her face. Heil laughed

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Supreme Court revised a defendant's sentences after the trial court imposed reduced but consecutive sentences. The Court noted that the trial court had identified three aggravating circumstances but did "not explain why [those] circumstances justif[ied] consecutive sentences as opposed to enhanced concurrent sentences." Id. The Court found "it ironic that despite a finding of aggravating circumstances, the trial court nonetheless imposed less than the presumptive sentence on each count." Id. Thus, the Supreme Court imposed enhanced but concurrent sentences for the five counts of child molestation that were identical and involved the same child. Id.

Here, the trial court found multiple valid aggravating circumstances and no mitigating circumstances and imposed enhanced and consecutive sentences. We conclude that Monroe is distinguishable, and the consecutive sentences are adequately explained by the aggravating circumstances found by the trial court.

[11] Heil mentions that his sentence is manifestly unreasonable. Appellant's Brief at 18. Prior to January 1, 2003, we reviewed a sentence to see if it was "manifestly unreasonable." However, the Indiana Supreme Court amended Ind. Appellate Rule 7(B), effective January 1, 2003.

and told K.H. that he had given her a "facial." Appellant's Appendix at 9. Heil repeatedly threatened K.H. and informed her that he would tell the kids at school that she did sexual favors for him. Heil also has a previous conviction for child molesting as a class C felony and admitted to being a repeat sexual offender.

Our review of the character of the offender reveals that, as noted above, Heil has a previous conviction for child molesting as a class C felony for molesting a fourteen-year-old neighbor. Heil's four-year sentence for that conviction was suspended to probation, and he received sex offender treatment. After he completed his probation, he began molesting K.H. Heil was also convicted in Kentucky in 2006 for first degree wanton endangerment, first degree stalking, and third degree terroristic threatening, and his sentence was enhanced for his status as a second degree persistent felony offender. Those convictions resulted from his use of a GPS locating device to track his wife, K.H.'s mother, and from his threatening her. According to testimony at the sentencing hearing, K.H. described Heil as a "monster," who terrorized her family. Transcript at 28.

Heil argues that the maximum sentences should be reserved for the worst offenders. The Indiana Supreme Court has observed that "the maximum possible sentences are generally most appropriate for the worst offenders." Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002).

> This is not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Id.

Heil contends that he is not one of the worst offenders because both offenses involved the same child, she was not physically injured, and others described him as polite and caring. Given Heil's criminal history, actions against K.H., and his position of trust with K.H., we must conclude that Heil does fit within the class of offenses and offenders that warrant the maximum punishment. After due consideration of the trial court's decision, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Garland v. State, 855 N.E.2d 703, 711 (Ind. Ct. App. 2006) (holding that the maximum sentence for child molesting was not inappropriate in light of the nature of the offenses and his character), trans. denied.

For the foregoing reasons, we affirm Heil's sentence for vicarious sexual gratification as a class D felony, child molesting as a class C felony, and his status as a repeat sexual offender.

Affirmed.

DARDEN, J. and NAJAM, J. concur